543UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA	§	
	§	
Plaintiff,	§	
	§	
v.	§	**SA: 5:20-CV-00907**
	§	
LESLIE TATUM, LMT,	§	
And LIVING HEALTH HOLISTIC	§	
HEALING CENTER, d/b/a	§	
LIVING HEALTH NEW	§	
BRAUNFELS,	§	
	§	
Defendants	§	

COMPLAINT FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND PERMANENT INJUNCTION

For its Complaint against Defendants Leslie Tatum and Living Health Holistic Healing Center d/b/a Living Health New Braunfels ("Defendants"), the United States of America ("United States") alleges as follows:

INTRODUCTION

1. On March 13, 2020, President Trump of the United States declared the COVID-19 outbreak in the United States constituted a national emergency beginning March 1, 2020, pursuant to his authority under the Constitution, the National Emergencies Act, 50 U.S.C. §1601 et seq., and the Social Security Act at 42 U.S.C. §1320b-5.

2. Defendants are engaging in and facilitating predatory mail and wire fraud schemes exploiting the current COVID-19 pandemic.

3. Defendants have conducted themselves to mislead the public into believing they are qualified to both administer COVID-19 tests and interpret the results of such tests. Defendants operate both a website with a domain name "livinghealthnb.com" and an electronic social media

page "Living Health New Braunfels" on the Facebook Inc., platform ("webpages"). Until recently, these webpages promoted COVID-19 and COVID-19 Antibody testing available for $85.00 at the Defendants' place of business located at 1423 N. Walnut Ave. #104, New Braunfels, TX 78130, and encouraged consumers to make appointments for testing. Advertisements were further sent to past clients via email.

4. The claims made by the Defendants are false. The FDA has not approved, cleared, or authorized any rapid blood tests for the diagnosis of active or acute infection with SARS-CoV-2, the virus that causes COVID-19. Instead, medical professionals use nasopharyngeal, nasal, sputum, or saliva samples to actually detect the presence of SARS-CoV-2 viral RNA. While there are FDA authorized blood tests available to detect COVID-19 antibodies, such tests should not be used to definitively diagnose or exclude active COVID-19 infection. Instead, as further explained below, such antibody tests should be used as an aid in identifying individuals with an adaptive immune response to SARS-CoV-2, indicating recent or prior infection, by detecting antibodies to SARS-CoV-2 in human blood specimens.

5. The purpose of the Defendants' website and emailed advertisements was to induce victims to pay Defendant Tatum $85.00 for a blood COVID-19 test that she is not qualified to perform and which did not provide the results as advertised.

6. The United States seeks to prevent continuing and substantial injury to victims of this fraudulent scheme, including the public health, by bringing this civil action under 18 U.S.C. §1345 to enjoin the Defendants' ongoing mail and wire fraud in violation of 18 U.S.C. §§1341 and 1343.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this action under 18 U.S.C. § 1345 and 28 U.S.C. §§ 1331 and 1345.

8. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

THE PARTIES

9. Plaintiff is the United States of America.

10. Defendant Leslie Tatum, owner and operator of Defendant Living Health Holistic Healing Center, acting alone or in concert with others, is the registrant of "livinghealthnb.com" and owner of the Living Health New Braunfels Facebook page, who has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint.

11. Defendant Living Health Holistic Healing Center, d/b/a Living Health New Braunfels ("Living Health") is a business owned by Defendant Tatum since 1993. It is presently located at 1423 N. Walnut Ave. #104, New Braunfels, TX 78130.

FRAUDULENT SCHEME

12. Leslie Tatum is the owner and operator of Living Health Holistic Healing, D/B/A Living Health New Braunfels, located at 1423 N. Walnut Ave. #104, New Braunfels, TX 78130. Tatum describes herself as a "Holistic Health Care practitioner" and is a licensed massage therapist (Texas license #MT023741)[1]. There is no record of her holding a license as a medical doctor,

[1] The Texas Occupations Code defines a "massage therapist" as "a person who practices or administers massage therapy or other massage services to a client for compensation. The term includes a licensed massage therapist…" Texas Occupations Code Section 455.001 (7). The Texas Department of Licensing and Regulations is tasked with issuing and regulating licenses for massage therapists and their establishments. (Texas Occ. Code Sections 455.0511,

osteopath, or nurse in the state of Texas that would qualify her to perform COVID-19 diagnostic or antibody testing and provide results to patients.

13. On July 8, 2020, the office of the Criminal District Attorney for Comal County received a complaint regarding COVID-19 rapid blood tests being administered by Defendant Tatum at Living Health. This complaint was forwarded to the U.S. Attorney's Office for the Western District of Texas' Coronavirus Fraud Coordinator for consideration and investigation. Special Agent Laura Sirles and Task Force Officer Sharleigh Drake with the Federal Bureau of Investigation conducted interviews as part of the investigation into this complaint. The sworn Declarations of both Special Agent Sirles and TFO Drake ("Sirles Declaration" and "Drake Declaration," respectively) are attached in support of this complaint, along with evidentiary exhibits referenced in the Declarations.

14. On June 30, 2020, Patient M.L., a resident of the Western District of Texas and the original complainant, began experiencing symptoms of a COVID-19 infection, including a fever. Patient M.L. wanted to be tested to make sure she was not a risk to her three children, her husband in the U.S. Army, or to her elderly father, for whom she provides care. Patient M. L. was initially told about Living Health by word of mouth. M.L. checked the Living Health website and saw it stated COVID-19 and COVID-19 antibody testing were available at the facility. She additionally watched a video on the website of Defendant Tatum explaining the test. Based on the advertisement and video on the website, Patient M.L. believed the test offered at Living Health was to determine the presence of an active COVID-19 infection.

455.151(a), and 455.154). This is a separate and distinct agency from those tasked to license and regulate medical professionals, such as the Texas Boards of Medicine and Nursing.

15. On July 2, 2020, Patient M.L. called and made a same day appointment for 10:15 a.m. at Living Health for COVID-19 testing. M.L. arrived at the Living Health facility, informed Sheila, the receptionist, that she was sick and had a fever, and paid her $85 testing fee with her debit card. Per Patient M.L., Defendant Tatum took her to a back room, pricked her finger, and took two drops of blood, which were then placed onto a sheet of paper. Patient M.L. then returned to the waiting room. While waiting, she overheard Defendant Tatum announce out loud to a male patient that his test results were negative. Defendant Tatum also delivered Patient M.L. her results in the waiting room, again stating out loud that Patient M.L. was negative and handing her a test results paper. Patient M.L. was relieved because at that time, she believed this meant she was negative for active COVID-19 infection.

16. Upon leaving Living Health, Patient M.L. contacted a friend concerning her results. A few days prior to becoming ill, Patient M.L. spent time with this friend and wanted to let her friend know that she was negative for COVID-19. The friend checked the Living Health website, and suggested the test administered to Patient M.L. might not have been the correct test for an active COVID-19 infection. Patient M.L. contacted Living Health, and spoke to Sheila, the receptionist, who informed her the test results were accurate.

17. After speaking with her friend and the Living Health receptionist on July 2, 2020, Patient M.L. elected to conduct a tele-medicine visit with her family practice doctor that same day. Upon hearing her symptoms, her physician stated she needed a COVID-19 infection test. M.L. called the Defendants to complain she had not been given the right COVID-19 test. The receptionist, Sheila, stated she did not understand why Patient M.L. was upset.

18. On July 3, 2020, Patient M.L. went to Promptu Urgent Care in New Braunfels, where here nose was swabbed for a test sample. M.L. received her test results in 30 minutes and

she was confirmed positive for an active COVID-19 infection. M.L. subsequently filed a complaint with the New Braunfels Health Department on or around July 3, 2020.

19. Patient M.L. is not the only victim who paid the Defendants for COVID-19 testing, received a negative test result from Defendant Tatum, and relied on the Defendants' legitimacy in conducting the test and interpreting the test when making healthcare decisions affecting themselves and the public.

20. Patient J.T., a minor child, needed a negative COVID-19 diagnostic test result showing they did not currently have an active COVID-19 infection in order to participate in a baseball tournament. Patient J.T.'s parent learned of the Defendants and the testing available on Facebook, and made an appointment for the child to be tested. On June 23, 2020, Patient J.T., accompanied by their parent, was tested by Defendant Tatum. According to J.T.'s parent, Defendant Tatum performed a finger prick, which the parent described as "like a diabetes test." Defendant Tatum stated the test was for COVID and antibodies and had a 98.2% accuracy rate. After Patient J.T. and their parent spent ten minutes waiting in the lobby, Defendant Tatum entered the lobby and stated J.T.'s test results were negative, handing the parent the negative test result. Patient J.T.'s parent assumed the test was accurate because J.T. did not display any symptoms of COVID-19. Patient J.T.'s parent provided the test result to the baseball coach, and J.T. was permitted to play in the baseball tournament.

21. Patient C.M., a minor child, was exposed to a baseball coach who tested positive for COVID-19 in mid-June. In order to play in a baseball tournament the following weekend, Patient C.M.'s parent needed to provide a negative COVID-19 diagnostic test result. Initially, Patient C.M's mother wished to have C.M. tested at a Texas MedClinic because that facility uses the short swabs (*i.e.*, shorter nasal swabs); however, she was informed by a friend that testing was

available at Living Health. Patient C.M.'s mother called Living Health and asked if they used short swabs for COVID testing. She was informed by Living Health that the COVID test involved a finger prick blood test. An appointment was made for Patient C.M. to be tested on June 24, 2020. Patient C.M was accompanied to Living Health by their father. Patient C.M.'s mother reviewed the test result sheet after the appointment. Patient C.M.'s mother stated the results sheet was confusing, but her understanding was that it showed her son was negative for an active COVID-19 infection. The test results sheet was also accepted by the baseball coach as evidence of a negative test result, and Patient C.M. continued to play baseball.

22. Patient L.H., a minor child, had indirect contact with a baseball coach who tested positive for COVID-19. In order for Patient L.H. to continue playing baseball, he was required to produce a negative COVID-19 diagnostic test result. Patient L.H.'s parent had found the lines for COVID-19 testing at Texas MedClinic to be extremely long, and they heard from the parent of Patient J.T. that Defendants were offering a finger prick test. The parent of Patient L.H. called Living Health, explained that their child had been indirectly exposed to someone who tested positive, and stated their child needed to be tested to confirm they did not have an active COVID-19 infection in order to play baseball. Living Health scheduled Patient L.H. for an appointment at Defendants' facility for testing.

23. At the facility, Patient L.H's parent paid the $85 fee with their credit card. While there, they encountered Patient C.M. and Patient C.M's father. Patient L.H.'s parent recalls Defendant Tatum took her child from the lobby for testing, then returned him to the lobby. Patient L.H's parent stated Defendant Tatum came to the lobby holding a test that appeared similar to an EPT pregnancy test. Defendant Tatum stated both Patient L.H.'s test and Patient C.M.'s test were negative, and handed the parents each a piece of paper. As Patient L.H. and their parent exited

Defendants' facility, their parent noticed the sheet had a signature, but no notation of the actual test results. They also noticed Patient C.M's paper similarly had a signature and no notation of the test results. Patient L.H's parent reentered the facility, and approached the receptionist, stating the test results sheets were incomplete. Defendants' receptionist then checked the box indicating a negative test result on both sheets of paper and handed them back to Patient L.H.'s parent. Patient L.H.'s parent believed the test was specifically for active COVID-19 infections, and turned in this test result form so that their child could continue playing baseball. At a later date, Patient L.H.'s parent spoke with Patient C.M.'s mother, who had shown C.M.'s test results to a friend who worked in a laboratory. Patient C.M.'s mother informed the parent of Patient. L.H. that, based on the review of the test results by their friend, they now believed the test performed at the Defendants' facility was only for antibodies.

24. On July 7, 2020, Staci Strahl, a former Living Health employee contacted the New Braunfels City Attorney's Office to report Defendants' ongoing scheme to provide COVID-19 rapid blood tests since May 2020. Ms. Strahl stated Defendant Tatum was advertising the test on Facebook and by email to existing clients using email addresses affiliated with the facility. In the May 14, 2020, email to existing clients, Defendants stated in part "We are now testing for the COVID-19 Virus and ANTIBODIES….This test will show if you already had the virus and have developed antibodies, or if you currently have the virus and are asymptomatic."

25. Ms. Strahl also recalled a New Braunfels City official had contacted the facility and informed Defendant Tatum she was not allowed to conduct COVID-19 testing. Defendant Tatum informed Ms. Strahl that Tatum intended to conduct the tests despite the statement from the city official. Ms. Strahl did not doubt Defendant Tatum, because Defendant Tatum informed Ms. Strahl that she continued to see patients at Defendants' facility during the Governor's directed

shutdown of massage establishments and non-essential businesses in March and April 2020. Defendant Tatum further instructed Ms. Strahl to lie to city officials in the event they came to the facility when Defendant Tatum was performing services to clients, and was upset when Ms. Strahl did not do so.

26. Ms. Strahl recalled Defendant Tatum's employee, Shelly Herbert, put the Defendant in contact with an acquaintance for "Bio Science Labs", a company based in Arizona. After speaking with the representative from Bio Science Labs, Defendant Tatum ordered approximately 500 COVID-19 tests. After realizing how expensive the price was for 500 COVID-19 tests, Defendant Tatum cancelled her order and subsequently reordered 100 COVID-19 tests. Thereafter, Defendant Tatum placed an additional order for approximately 100-200 COVID-19 tests. Ms. Strahl stated Defendant Tatum began COVID-19 testing in the third week of May 2020 due to a delay in the length of time it took for the tests to arrive at Living Health. Ms. Strahl recalled when the tests were delayed in arriving at Living Health, Defendant Tatum asked Ms. Herbert to get a tracking number for the test shipment from her acquaintance at "Bio Science Labs." Ms. Strahl did not have anything to do with the COVID-19 test ordering process. Ms. Strahl stated that Defendant Tatum generally used a Wells Fargo business credit card for purchases related to Living Health.

27. Ms. Strahl recalled the test was a COVID rapid antibody test that provided test results in 10 minutes. Ms. Strahl understood the test was for COVID-19 antibodies, and not an active COVID-19 infection. Ms. Strahl stated Defendant Tatum had a form that she used to provide test results to patients, and only wanted to test healthy people. Ms. Strahl recalled in a week and a half of testing when she was present, twenty people were tested using the tests from

Bio Science Labs. According to the tests as conducted by Defendant Tatum, all twenty patients tested negative.

28. Bryan Ruiz, Environmental Services Manager for the City of New Braunfels received information by early May that Defendant Tatum wanted to conduct COVID-19 rapid tests. In his capacity as Environmental Services Manager, he informed Defendant Tatum on three separate occasions between March 23 and May 5, 2020, that she could not perform medical services without oversight by a Physician, Physician Assistant, or Nurse Practitioner. On May 5, 2020, Mr. Ruiz received a letter signed by Tracey Mixon, Nurse Practitioner, stating Ms. Mixon would be providing the COVID-19 antibody tests at the Living Health New Braunfels Facility on a part time basis once the test kits arrived. Between May 8 and May 12, Mr. Ruiz sent Defendant Tatum emails reminding her that the letter was insufficient, "as during their last discussion," Mr. Ruiz indicated a medical doctor was necessary to perform services at Living Health. On May 13, 2020, Defendant Tatum responded via email with an acknowledgement of the need from a statement from a medical doctor. On May 20, 2020, Mr. Ruiz responded to Defendant Tatum and stated "The COVID testing you and I discussed can be performed but must be performed by a currently licensed M.D., Physicians Assistant, or Nurse Practitioner."

29. An interview with Ms. Mixon on July 14, 2020, determined she had been formerly employed by Defendant Tatum, and that employment ended in January 2020. Ms. Mixon stated Defendant Tatum informed her Tatum was starting COVID-19 antibody testing and asked Ms. Mixon if she wanted to purchase some COVID-19 antibody tests. Ms. Mixon stated she and Defendant Tatum agreed Ms. Mixon would do the COVID-19 antibody testing for both their patients at the Living Health facility. However, Ms. Mixon states she had not tested anyone for COVID-19 antibodies at the facility. Ms. Mixon stated she had signed the letter with the intention

of providing tests to her own patients at Living Health, but had not conducted any COVID-19 tests for infections or antibodies at the facility. Ms. Mixon stated Defendant Tatum had drafted the letter for Mixon's signature. Defendant Tatum told Ms. Mixon the testing at the Living Health New Braunfels facility was only for COVID-19 antibodies. Ms. Mixon was not aware of any COVID-19 testing performed by Defendant Tatum on her own. Ms. Mixon believed Defendant Tatum would need to have a medical director to approve testing, and she was unaware whether Defendant Tatum in fact had a medical director.

30. On July 17, 2020, Dr. Dorothy Overman, Comal County Health Official, was interviewed concerning the Defendants and COVID-19 testing occurring at the facility. Based on a complaint received by a patient, Dr. Overman believes the COVID-19 test offered at Living Health is only a COVID-19 antibody test. Regardless, Dr. Overman made a complaint to the Texas Board of Medicine, as she is concerned Defendant Tatum is offering and administering a COVID-19 test to patients, providing them with results, and thus diagnosing patients without a medical license or a plan of treatment for these patients. Dr. Overman further stated it is against Texas law to fail to inform the local or state health department of positive COVID-19 test results, including positive COVID-19 antibody test results. As of July 17, 2020, Dr. Overman had not received any reports from Defendants concerning positive tests for active COVID-19 infections or COVID-19 antibodies.

31. Defendant Tatum, through Living Health, operates a website, "livinghealthnb.com" which advertised "COVID-19 and COVID-19 antibody testing" available at the facility until July 24, 2020. Patient M.L provided a screenshot of the website as it appeared on July 13, 2020. An image of the website as it appeared on July 23, 2020 is attached to the Complaint as Complaint Exhibit 1. The website quotes statements from Carlos Encinas, the Chief Science Officer of

BioLab Sciences, concerning the rapid antibody test manufactured and distributed by BioLab Sciences. (Compl. Exhibit 1). The website also contained a three minute, ten second YouTube video from Defendant Tatum in which she describes using a COVID-19 Rapid Test with 98.2% accuracy. In the video, Defendant Tatum describes the testing form that is provided to patients following the test, and notes the columns on her testing form include options to mark for positive, acute, negative, and antibodies. Defendant Tatum informs the public in this video that she is a certified phlebotomist and "it's totally right on," implying she is a qualified medical professional performing administering tests and interpreting their results legitimately and accurately.[2]

32. Defendants previously used their website at livinghealthnb.com, affiliated email addresses, and a Facebook social media page to advertise COVID-19 and COVID-19 antibody testing. As of July 24, 2020, all COVID-19 and COVID-19 antibody testing advertisements abruptly disappeared from the Defendants' website and social media. The advertisements were removed after the Texas Board of Medicine sent the Defendants a letter on July 10, 2020. This letter informed Defendant Tatum there had been a complaint made against her, alleging she had violated Texas Occ. Code 151.002(a) concerning the Unlicensed Practice of Medicine. Specifically, the complaint to the Board of Medicine alleged Defendant Tatum was practicing medicine in Texas without a Texas medical license at her place of business, Defendant Living Health New Braunfels, by performing COVID-19 antibody tests and diagnosing patients.

[2] A phlebotomist is an individual who performs phlebotomy, "a procedure in which a needle is used to take blood from a vein, usually for laboratory testing." National Cancer Institute's Dictionary of Cancer Terms. National Institute of Health. https://www.cancer.gov/publications/dictionaries/cancer-terms/def/phlebotomy The State of Texas does not license phlebotomists – while individuals can pursue a certificate in phlebotomy, often, those performing phlebotomy do so in the course of their duties as a licensed healthcare practitioner, such as a nursing or medical assistant, nurse, or physician.

33. Based on the information promulgated by Defendants and the interview with Ms. Strahl, the test used by the Defendants was the "Rapid Result COVID-19 Test Kit" manufactured and marketed by BioLab Sciences in Scottsdale, Arizona. The test is available for order and purchase through the BioLab Sciences website, "biolabsciences.net." An image of the website as it appears to the public is attached to the Complaint as Complaint Exhibit 2. This test is a serology or antibody test, which the FDA distinguishes from a diagnostic test used to diagnose an active COVID-19 infection. According to the FDA's FAQs concerning Serology/Antibody tests

> The terms "serological" or "antibody" tests are generally used to refer to tests that detect antibodies to the SARS-CoV-2 virus. Because the antibodies are part of the body's immune response to exposure and not the virus itself, *such testing cannot be used for diagnosis of infection*. Based on the underlying scientific principles of antibody tests, *we do not expect that an antibody test can be shown to definitively diagnose or exclude COVID-19 infection*. SARS-CoV-2 antibody tests are intended for use as an aid in identifying individuals with an adaptive immune response to SARS-CoV-2, indicating recent or prior infection….[3]

As of the time of filing this complaint, the FDA has not approved, cleared, or authorized any point of care rapid blood tests for diagnosis of active infection with SARS-CoV-2, the virus that causes COVID-19 infections. Tatum's actions to market and distribute this test otherwise constitute fraudulent misrepresentations in furtherance of the scheme.

34. Examination of the BioLab Sciences website further determined the Defendants are not qualified to perform this test. According to the Frequently Asked Questions, BioLab Sciences includes the question, "Do I need to see a doctor to take this test?" and responds "Yes. The test must be administered and results reported by a licensed provider." (Compl. Exhibit 2).

[3] FDA Serology/Antibody Test FAQs "Are antibody, or serology, tests used to diagnose SARS-CoV-2 infection?" https://www.fda.gov/medical-devices/emergency-situations-medical-devices/faqs-testing-sars-cov-2#nolonger-ivd. *Emphasis added*.

35. A presentation packet prepared by BioLab Sciences and another company, Boston Biolife, in April 2020, which is available on BioLab Sciences' website, confirms the improper use of this medical device by an unlicensed individual. The packet, Exhibit 3 to this Complaint, clearly states testing with this device "should **only** be performed **in conjunction with** other laboratory approved testing and/or clinical observations….**All test results are presumptive and should be confirmed by an approved molecular assay.** A presumptive negative test does not preclude 2019n-CoV infection…" (Complaint Exhibit 3, Page 3). This same packet also included the Instructions for Use for the test, which also clearly state that (i) Results from antibody testing should not be used as the sole basis to diagnose or exclude SARS-CoV-2 infection or to inform infection status;" and (ii) "This test is for professional use." (Complaint Exhibit 3, Page 6).

36. Examination of the test results sheets provided by Defendants to all four patients described above determined none of them contain any language to indicate the tests were presumptive and should be confirmed with additional laboratory testing.

37. Defendants do not possess the licenses, credentials, or expertise necessary to properly operate a clinical laboratory capable of conducting assays to determine whether a patient's blood rapid test for antibodies confirms a recent or prior infection with the virus that causes COVID-19. Under the Clinical Laboratory Improvement Amendments ("CLIA")[4], use of

[4] The Clinical Laboratory Improvements Amendments of 1988 are codified at 42 U.S.C. §263(a) and promulgate regulations concerning clinical laboratory standards and certifications through 42 CFR §493. "The Centers for Medicare & Medicaid Services (CMS) regulates all laboratory testing (except research) performed on humans in the U.S. through CLIA. In total, CLIA covers approximately 260,000 laboratory entities. The Division of Clinical Laboratory Improvement & Quality, within the Quality, Safety & Oversight Group, under the Center for Clinical Standards and Quality (CCSQ) has the responsibility for implementing the CLIA Program." "Clinical Laboratory Improvement Amendments (CLIA)" https://www.cms.gov/Regulations-and-Guidance/Legislation/CLIA. Last visited August 1, 2020. The Texas Department of Health and Human Services explicitly states "Laboratories must comply with the Clinical Laboratory Improvement Amendments of 1988….Laboratories are not state licensed." "Laboratories-Clinical

serology COVID-19 tests are limited to laboratories certified by CLIA to perform high complexity testing, and at the point-of-care facilities when covered by such a laboratory's CLIA certificate for high-complexity testing, unless and until FDA authorizes additional testing environments for a specific test. There is no evidence to suggest Defendants hold or are covered by a current CLIA laboratory certificate to perform high complexity testing.

38. A federal search warrant was executed at the Living Health New Braunfels office on July 31, 2020. The FBI agents executing the warrant discovered the July 10th letter from the Texas Board of Medicine.

39. Defendants, through their conduct and statements, held themselves out to the public as a legitimate, qualified medical testing site for the presence of active COVID-19 infections and COVID-19 antibodies. Victims have relied on the tests as presented to be definitive in their determination of the presence of active COVID-19 infection, to their personal detriment and for the Defendants' financial gain.

40. Victims suffer financial loss and risk to their personal health from the mail and wire fraud schemes engaged in and facilitated by Defendants. The public health is at further risk, as victims of this scheme may have received false negative results for active COVID-19 infections and/or COVID-19 antibodies, and in reliance on these fraudulent, inaccurate results, failed to seek appropriate medical treatment or isolation from others.

41. Absent injunctive relief by this Court, Defendants' conduct will continue to cause injury to victims and risk to the public health at large.

COUNT ONE

Laboratory Improvement Amendments" Texas Department of Health and Human Services. https://hhs.texas.gov/doing-business-hhs/provider-portals/health-care-facilities-regulation/laboratories-clinical-laboratory-improvement-amendments. Last visited August 1, 2020.

18 U.S.C. §1345

42. The United States re-alleges and incorporates each of the preceding paragraphs as though fully set forth herein.

43. By reason of the conduct described herein, Defendants have violated, are violating, and are about to violate 18 U.S.C. §1341 by engaging in and facilitating a scheme and artifice to defraud and obtain money or property by means of false or fraudulent representations with the intent to defraud, and, in so doing, caused to be deposited and took or received therefrom, items sent or delivered by the Postal Service or private or commercial interstate carrier. Such violation has further occurred in relation to a Presidentially declared major disaster or emergency as defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act at 42 U.S.C. §5122.

44. Upon a showing that Defendants are committing or about to commit a violation of 18 U.S.C. §1341, the United States is entitled, under 18 U.S.C. §1345, to seek a temporary restraining order, a preliminary injunction, and a permanent injunction restraining all future fraudulent conduct. The Court may also grant such other relief it deems just and proper to prevent a continuing and substantial injury to victims of the fraud scheme.

45. As a result of the foregoing, the Court should enjoin the Defendants' conduct under 18 U.S.C. §1345.

COUNT TWO
18 U.S.C. §1345

46. The United States re-alleges and incorporates each of the preceding paragraphs as though fully set forth herein.

47. By reason of the conduct described herein, Defendants have violated, are violating, and are about to violate 18 U.S.C. §1343 by engaging in and facilitating a scheme and artifice to

defraud and obtain money or property by means of false or fraudulent representations with the intent to defraud, and, in so doing, use interstate or foreign wire communications.

48. Upon a showing that Defendants are committing or about to commit a violation of 18 U.S.C. §1343, the United States is entitled, under 18 U.S.C. §1345, to seek a temporary restraining order, a preliminary injunction, and a permanent injunction restraining all future fraudulent conduct. The Court may also grant such other relief it deems just and proper to prevent a continuing and substantial injury to victims of the fraud scheme.

49. As a result of the foregoing, the Court should enjoin the Defendants' conduct under 18 U.S.C. §1345.

PRAYER FOR RELIEF

WHEREFORE, the United States requests judgment in its favor and against the Defendants, including the following relief:

A. That the Court issue an order to show cause, pursuant to 18 U.S.C. §1345, requiring Defendants demonstrate at a hearing why the Court should not grant the United States' application for a temporary restraining order, a preliminary injunction to prevent Defendants, their agents, officers, and employees, and all other persons or entities in active concert or participation with them, from committing mail fraud, as defined by 18 U.S.C. §1341, wire fraud, as defined by 18 U.S.C.§ 1343, from advertising COVID-19 and COVID-19 antibody testing through the use of the domain "livinghealthnb.com," electronic mail messages, or any electronic social media platform, including the Living Health New Braunfels Facebook page; from performing any COVID-19 testing, whether diagnostic or serological; and from performing or providing any services related to diagnosis, treatment, management, mitigation, or relief of symptoms of COVID-19;

B. That the Court issue a permanent injunction, pursuant to 18 U.S.C. §1345 on the same basis and to the same effect;

C. All such further relief as may be just and proper.

Dated: August 5, 2020

Respectfully submitted,

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